RECENT CASES.

ADMIRALTY — JURISDICTION — STATE CONTROL OVER MARITIME RIGHTS. Several persons were killed in a collision on the high seas between two vessels owned by citizens of Delaware. Suit was brought in an admiralty court under a Delaware statute which allowed an action for death by wrongful act. *Held*, that the action will lie. *The Hamilton*, 207 U. S. 398. See NOTES, p. 357.

ADVERSE POSSESSION — WHAT CONSTITUTES — POSSESSION UNDER UNRECORDED DEED. — In 1891 A conveyed land to C, who re-conveyed to A and B. The first deed was recorded. C forged a certificate of registration on the second deed, which was not in fact recorded. In 1895 C mortgaged the land to the plaintiff, who was without notice of the unrecorded deed. In 1903 the plaintiff brought an action to enforce the mortgage against A and B, who had been in actual, open, and continuous possession of the land under a claim of title in themselves for the whole period. The statute of limitations was ten years. *Held*, that the plaintiff may recover. *McVity* v. *Tranouth*, [1908] A. C. 60.

By the registry laws unrecorded deeds were void as to subsequent purchasers or mortgagees without actual notice, but valid as between the parties. *Cf. McGregor* v. *Kerr*, 29 Nova Scotia 45. The defendants' possession between 1891 and 1895 consequently had all the essential elements of adverse possession necessary to claim the benefit of the statute except the existence of a right of action against them. Although it is generally stated that a grantee's possession is adverse to his grantor, only one case has been found which applied the doctrine to possession that no one had a right to disturb. See *Sutton* v. *Pollard*, 96 Ky. 640, 644. The case of a donee of land under an oral gift is distinguishable, because the donor can at any time oust him or bring ejectment, the gift being void by the statute of frauds. *Cf. Vandiveer* v. *Stickney*, 75 Ala. 225. Moreover, an analogy to the present case is found in the case of negative easements. Where the acquisition of easements by adverse user is based on the analogy to the statute of limitations, negative easements cannot be acquired by adverse user because there is no right of action. *Napier* v. *Bulwinkle*, 5 Rich. Law (S. C.) 311; *cf. Parker* v. *Banks*, 79 N. C. 480, 485.

ALIENS — ENFORCEMENT BY ASSIGNEE OF CONTRACT TO CONVEY LAND TO ALIEN. — Civil Code of South Carolina, 1902, § 1795, provided that "no alien either in his own right, or as trustee or *cestui que trust*, shall own or control more than five hundred acres of land." The defendant contracted to convey more than five hundred acres to the plaintiff's assignor, an alien. *Held*, that the plaintiff, a resident, may enforce specific performance. *Tucker* v. *Atlantic Coast Lumber Co.*, 59 S. E. 859 (S. C.).

A statute passed in 1872 gave aliens the same capacity to own and acquire property as citizens. See CIV. CODE OF S. C., 1902, § 2360. The court construes the present statute merely to revive the common law as to land exceeding the prescribed amount. At common law, an alien could take by purchase and hold equitable as well as legal estates in land, defeasible only by the sovereign. *Cross* v. *De Valle*, 1 Wall. (U. S.) 3. A contract to convey was enforceable against an alien vendee. *Scott* v. *Thorp*, 1 Edw. Ch. (N. Y.) 512. Since generally an alien could defend, but not enforce, his rights in land, it is probable that an alien vendee could not obtain specific performance. *Cf. Williams* v. *Myers*, 8 Nova Scotia 157; *Hubbard* v *Goodwin*, 3 Leigh (Va.) 492. But in the case of an express trust for an alien, the *cestui's* assignee, or the sovereign, could proceed against the trustee on the ground that an interest passed to the alien in spite of his personal incapacity to enforce it. See *Murray* v. *Heron*, 7 Grant Ch. (U. C.) 177; *Sharp* v. *St. Sauveur*, L. R. 7 Ch. 343. This theory

somewhat stretches the notion of a vendee's equitable title, which is usually considered synonymous with enforceability. But public policy, as illustrated in the analogous doctrine of transfer of title through corporations, acting *de facto* or *ultra vires*, favors the present result.

BANKRUPTCY — PROVABLE CLAIMS — ANTICIPATORY BREACH OF CONTRACT. — A promise was given to buy stock at a certain future date on the tender of the certificate by the holder. Before the time fixed, the promisor was adjudged a bankrupt and a trustee appointed. The certificates were tendered to the trustee. The promisee wished to be allowed to prove his claim. *Held*, that his claim is provable, since by offering to file it he has elected to treat the contract as broken. *In re Neff*, 157 Fed. 57 (C. C. A., Sixth Circ.).

For a discussion criticizing a similar decision reaching the opposite result, see 20 HARV. L. REV. 66.

BANKRUPTCY — RIGHTS AND DUTIES OF BANKRUPT — RIGHT TO EFFECT COMPOSITION BEFORE ADJUDICATION. — Upon reference of an involuntary petition, the bankrupt corporation asked to be allowed to attempt a composition with creditors before adjudication. *Held* (by the referee), that a composition can be effected before adjudication. *In re Back Bay Automobile Co.*, 19 Am. B. Rep. 33 (Dist. Ct., D. Mass., Nov. 1907).

If the court may call meetings of creditors before adjudication, then certainly all conditions required for such a composition may be fulfilled. Section 55 *e* of the Bankruptcy Act provides that a meeting may be called whenever one-fourth of those who have proved their claims shall so request. The referee interpreted this section as meaning that meetings of creditors may be called prior to adjudication. Such an interpretation, however, seems directly in conflict with § 55 *a*, which expressly provides that the first meeting of creditors shall be held not less than ten days after adjudication. But even if the referee is wrong on this point, a composition before adjudication seems possible. In no step of the proceedings prescribed for a composition by § 12 of the present Act is an adjudication or a meeting of creditors expressly made essential. *Cf.* BANKRUPTCY ACT OF 1874, U. S. REV. STAT., § 5103 *a*. Moreover, such a requirement cannot be implied from the express conditions of compositions that the bankrupt be examined in open court and that a certain number of creditors whose claims have been allowed shall accept the composition in writing. *Cf. In re Fleisher*, 151 Fed. 81; BANKRUPTCY ACT OF 1898, §§ 57 *d*, 57 *f*.

BOUNDARIES — EXTENSION OF CITY BOUNDARIES INTO NAVIGABLE RIVER. — The boundary of a city was the shore of a navigable river. A railroad owning land on the river-front erected permanent piers resting on piles. By statute the title to such improvements vested in the riparian owners, and not in the state. *Held*, that the city boundary is coincident with the boundary of the pier, and that the latter is taxable by the city as property within its limits. *Western Md. T. R. Co.* v. *Mayor, etc., of Baltimore*, 68 Atl. 6 (Md.).

It is well settled that, unless expressly authorized by statute, a city cannot tax land outside city limits. *Gilchrist's Appeal*, 109 Pa. St. 600. Land acquired by natural accretion, however, would be within the city limits, since the boundary should change as the actual shore-line changes, where the shore is expressly made a boundary. *Cf. East Omaha Land Co.* v. *Jeffries*, 40 Fed. 386, 392. Similarly, solid piers or wharves of filled-in earth or stone, the construction of which is permitted by statute, would be within the city's jurisdiction, the actual shore-line being as much changed by them as by natural accretion. See 2 DILL., MUN. CORP., 748. But it is difficult to call a pier on piles, under which the water flows as before, a new shore. Hence the boundary seems unchanged in the present case. *Cf. Ft. Smith, etc., Co.* v. *Hawkins*, 54 Ark. 509. It may be urged, however, that the result of denying the city jurisdiction — that if many such piers were built the city would be as effectually shut off from its water front as by solid piers — would clearly violate the intended effect of the limitation in the city charter.